IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 74/2005.

Mr. Rosario D'Souza,
son of Mr. Martin D'Souza,
through his next friend Remy D'Souza,
resident of Revona, Pathaiwada,
Quepem and presently in Judicial
Custody, at Sub-Jail,
Sada, Vasco-da-Gama, Goa. ..... Applicant.

V/s.

State of Goa,
through Public Prosecutor. ..... Respondent.

Shri Arun Bras de Sa, Advocate for the petitioner.

Shri S.N. Sardessai, Public Prosecutor for the respondent/State.

CORAM : N.A. BRITTO, J.

Date of reserving Order :
6th May, 2005.

Date of pronouncing Order :
1st June, 2005.

O R D E R

The applicant herein is accused in Sessions Case No.5/2004, now pending before the learned Addl. Sessions Judge, Panaji and whose applications for bail have been rejected by Orders dated 1/3/2004 and 26/4/2005 of the learned Addl. Sessions Judge, and who is now before

this Court seeking bail.

2. Charge against the accused has already been framed under Sections 143, 147, 148, 341, 427, 307, 302 r/w. 149 and 120-B I.P.C. and a revision filed before this Court against the said order of framing of charge against the accused, was dismissed by this Court in April, 2004.

3. The first submission made by Shri Arun Bras de Sa is that the accused is entitled to be admitted to bail because of delay in trial. Shri Bras de Sa has submitted that although the accused had surrendered before the learned Addl. Sessions Judge in December, 2003, no progress was made in the case. It does appear that for some time, the trial against the accused did not proceed with expected speed, but the learned Addl. Sessions Judge, in her Order dated 26.4.2005 has clearly stated that the trial against the accused was fixed on that day. If that is so, since now a regular Addl. Sessions Judge is available to conduct the said trial, the same is bound to proceed with the required speed. In my view, the accused is not entitled for bail on that ground. The decision in the case of ***Bal Krishna Pandey alias Vidur vs. State of U.P.,*** ((2003) 12 SCC 186), is not an authority on the subject of granting of bail on account of delay in trial. That was a case where the accused involved was charged under Sections 307, 323 and 504 I.P.C. and the Supreme Court had proceeded to grant bail to the said accused upon perusal of

medical evidence and other material available on record. In the case of ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and another.*** (2004 AIR SCW 1581), the Supreme Court has proceeded to cancel an order granting bail on the ground that the accused was in custody for a period of three and half years and there was also no likelihood of the trial being concluded in the near future because of the gravity of offences and serious allegations of tampering of witnesses.

4. The second submission of Shri Bras de Sa is that the accused could not be denied bail only because he was found absconding. Indeed the accused was declared a proclaimed offender and the accused surrendered on 13.10.2003. The trial of 21 accused for the same offences was completed on 21.4.2002 and 19 accused were acquitted, whilst two accused were convicted. The accused waited even for the said two accused to be acquitted, in appeal, by this Court. The learned Addl. Sessions Judge rightly referred to the case of ***Niranjan Singh and another vs. Prabhakar Rajaram Kharote and ors.,*** (AIR 1980 SC 785), wherein the Supreme Court had stated that an outlaw cannot ask for the benefit of law and he who flees justice, cannot claim justice. If the accused absconded that long, there is no guarantee that he would not flee from justice again. As an absconder for such a long time and in serious offences, the applicant would also not be entitled to be released on bail. The observations of this Court in the case of ***Mahipati Bapu***

Bandgar vs. State of Maharashtra, (2002 ALL MR (Cri.) 565) that the fact of absconding would not, by itself, disentitle the accused to bail because on some occasions even innocent persons hide themselves from police on account of fear, are clearly not applicable to the facts of this case.

5. The third submission of Mr. Bras de Sa is that the only available evidence against the accused is that he assaulted Vijay N. Pandey and, therefore, the only offence which could be attributed to him is under Section 307 I.P.C. In my view, this submission also cannot be accepted. As already stated, the charge against the accused has already been framed for grave offences and the order framing charge has already been upheld by this Court. The fact is that on 26/12/1998, the present accused along with other accused who were tried in the said sessions case, had formed an unlawful assembly, armed with deadly weapons and wrongfully restrained Mr. Balkrishna Salunke and Mr. Vijay Pandey, Dy. General Manager and General Manager, respectively of Chowgule and Company, when they were returning to Ponda in a jeep and pelted stones on the jeep and then damaged the same, pulled out the said Salunke as well as the said Pandey and assaulted them with iron rods, as a result of which the said Saluke had died whilst on his way to the hospital while the said Pandey had suffered grievous injuries. The accused having been involved in grave offences, the punishment could be

very severe. Hence, in my view, the accused would not be entitled to be admitted to bail.

6. Hence, the application is, hereby, rejected.

N.A. BRITTO, J.

ssm.